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## REMARKS

As suggested by the Examiner, the Specification has been amended to incorporate the term “hourglass shape.”

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Accordingly, the Examiner’s concern regarding the Specification may be withdrawn.

Claims 22-25 stand withdrawn.

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Claims 5-6, 9, 16, 17, and 19 stand rejected under 35 USC Section 112 as allegedly indefinite for lack of the term “substantially” prior to the term “hourglass shape.”

Applicant has throughout the claims placed the term “substantially” prior to the term “hourglass shape.”

20

Accordingly the rejection of claims 5-6, 9, 16, 17, and 19 as indefinite may be withdrawn.

Claims 19-20 stand rejected under 35 USC Section 102 as allegedly anticipated by Wadden (US 5,881,932).

25

Claims 19 and 20 call for “first and second lobes.” The term “lobe” is defined as:

a projection or protuberance of rounded or globular form

Applicant attaches hereto a copy of the definition of “lobe” as taken from applicant’s dictionary.

5 As may be appreciated, such rounded or globular features, i.e., lobes, provide improved comfort when applied as lumbar support as disclosed by applicant herein. Nowhere does Wadden suggest that the disclosed container be used as lumbar support. While the contour and overall exterior shape does accommodate body contact while carrying the Wadden container, such contour and overall exterior shape as shown by Wadden is inappropriate for use as lumbar support. More particularly, the non-rounded and sharp corner presented by the Wadden container would appear to  
10 provide nothing but discomfort if used as lumbar support.

The rounded shape, or lobes as claimed herein, relate to an important function of the claimed device, i.e. user comfort when used for lumbar support.

15 Because Wadden fails to show “first and second lobes” e.g., rounded or globular features, as claimed by applicant, Wadden fails as a 35 USC Section 102 reference.

Accordingly, the rejection of claims 19 and 20 as anticipated by Wadden must be  
20 withdrawn.

Claims 26 and 28-29 stand rejected under 35 USC Section 102 as allegedly anticipated by Dougherty (US 5,816,395) substituting for Official Notice.

25 The container shown by Dougherty fails to show “a molded resilient structure, said structure including a first portion and a second portion, said first portion having a front-to-back thickness less than a front-to-back thickness of said second portion” as required by claim 26. Dougherty only shows a container which when closed presents a uniform front-to-back thickness.

Accordingly, Dougherty fails as a 35 USC Section 102 reference anticipating claims 26 and its dependents 28-29.

Furthermore, the Examiner alleges as “padding” the elements marked with reference numerals 16, 18, 120 and 122. In fact, such structures 16, 18, 120 and 122 are not padding but rather what is called “intermediate foam layers.” These interior structures do not provide padding. Padding elements are provided, but as interior elements directly contacting the article held by the container. More particularly, Dougherty identifies elements 20, 22, 132 and 134 as “cushioning layers.” The outer shell is identified as elements 12, 14, 112 and 114.

Clearly, Dougherty fails to show, or even suggest, use of padding exterior of a resilient structure as required by claims 26 and 28-29.

Accordingly, the rejection of claims 26 and 28-29 as anticipated by Dougherty must be withdrawn for this separate basis.

Claims 27 stands rejected under 35 USC Section 102 as allegedly anticipated by Dougherty and in alternative as allegedly made obvious in light of Dougherty.

The Examiner argues that:

Although the bag or the case usually has a handle for transportation, it is not clearly shown by Dougherty. In the event Dougherty does not disclose the handle, it would have been obvious to provide a handle attachment for ease of use as notoriously known in the container art.

In fact, Dougherty does not show, nor even suggest, use of a handle.

Accordingly the rejection of claim 27 as anticipated by Dougherty must be withdrawn.

5 Furthermore, claim 27 carries the limitations of claim 26, requiring as noted above padding elements exterior of a resilient structure. For this separate basis, the rejection of claim 27 as anticipated by Dougherty fails.

10 As for obviousness, it is the Examiner's responsibility to present *prima facie* obviousness in support of a Section 103 rejection. Without some suggestion or motivation to do so as found in the cited Dougherty reference, the Examiner has failed to establish *prima facie* obviousness in light of the Dougherty reference. While the container art may "notoriously" include handle attachment for transportation, it is the Examiner's obligation to show such relative to the particular container shown in the base reference.

15 More importantly, however, Dougherty fails as a 35 USC Section 103 reference for its lack of showing, let alone even suggesting, a padding element exterior of a resilient structure. The only padding shown by Dougherty is the interior-most structure directly contacting the article held by the container.

20 Accordingly Dougherty also fails as a 35 USC Section 103 reference relative to claim 27.

Claims 1-21 stand rejected as allegedly obvious over Rota (US 6,332,566) in view of Wadden (US 5,881,932).

25 First, neither Rota nor Wadden show or suggest use of the respective container as lumbar support. Both accommodate body contact when carried by the user and the overall shapes of both containers reflect such anticipated body contact and comfort, but only when carried by the user. Accordingly, neither reference can fairly suggest to one of ordinary skill in the relevant art such

shape and contour as would be suitable for lumbar support, e.g., a substantially hourglass shape with first and second lobes.

As the Examiner notes, the Rota reference does not in fact show a substantially hourglass shape with first and second lobes. Wadden similarly fails to show a substantially hourglass shape with first and second lobes.

As noted herein, the term "lobe" implies a rounded or globular structure, and one particularly useful as lumbar support. Incorporating the shape and contour of the Wadden container into the Rota container fails to cure this fatal shortcoming of the Examiner's proposed 35 USC Section 103 combination: neither reference individually or in combination teach the claim limitations. In this case shape and contour is not an arbitrary choice, but rather one relating to an important use of the claimed device.

Because neither the Rota reference nor the Wadden reference show a substantially hourglass shape with rounded or globular features as claimed, the combination fails to show the claimed features and thereby fails a basis for obviousness under 35 USC Section 103.

In light of the above amendment and remarks, reconsideration and withdrawal of the outstanding rejections is respectfully requested.

Respectfully submitted,

Keith A. Cushing  
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Reg. No. 32,407

**CERTIFICATE OF MAILING**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the US Postal Service as First Class Mail, in an envelope addressed to: **MAIL STOP AF**, Commissioner for Patents PO BOX 1450 Alexandria, VA 22313-1450, on the date indicated below.

Date

3/31/05

Keith A. Cushing  
Attorney of Record  
Reg. No. 32,407

## loaf

**loaf**, *v. i.*, loafed (35). *ph. pp.*, loafing, *ppr.* loafing, *pp.* loafing, *pp.* loafing.  
[Prob. back-formation from *loaf* (37).]  
1. to loiter or lounge about doing nothing; to idle.  
2. to work in a lazy way, accomplishing little; as, he loafed on the job.  
**loaf**, *v. t.*, to spend (time) idly; often with *away*.  
**loaf**, *n.*, the act of loafing.

**loaf**, *n.*, [18th-c. Western New England dial. "one who owns but does not actively work his own farm." prob. from Hudson Valley D.: akin to G. *laufen*, to run.]  
1. a person who loafs; lounging; idler.  
2. a loafing party; a loafing party.  
3. a loafing party; a loafing party.

**loam**, *n.*, [AS. *lām*, loam.]  
1. a rich soil composed of clay, sand, and some organic matter.  
2. a mixture of clay, sand, and straw used in making bricks, etc.  
3. popularly, any rich soil.

**loam**, *v. t.*, loamed, *ph. pp.*, loaming, *ppr.* to loam, *pp.* loaming.  
1. to fill or cover with loam.  
2. to fill or cover with loam.  
3. to fill or cover with loam.

**loam**, *n.*, [ME. *lone*, lane; AS. *lān*, lane, a loan, grant, etc.]  
1. the act of lending; a lending.  
2. a loan; a loan.  
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## lobstick

1. a very extensive genus of herbs with clusters of blue, red, or white flowers. The best-known species are *Lobelia inflata* or Indian tobacco, which is cultivated in North America, and *Lobelia cardinalis*, which is a native of the eastern United States and is the cardinal flower, known for its vivid red flowers.  
2. [—] any plant of this genus.

**lob**, *n.*, [ME. *lobbe*, *lob*, lit., "heavy, hanging, thick."]  
1. a big, slow, clumsy person. [Dial.]  
2. a big, slow, clumsy person. [Dial.]  
3. in tennis, a stroke in which the ball is sent high into the air, usually with the intention of dropping it into the back of the opponent's court.

**lob**, *v. t.*, lobbed, *ph. pp.*, lobbing, *ppr.* lobbing, *pp.* lobbing.  
1. to allow to droop; to hang languidly. [Obs.]  
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## lobular

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